UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGE
NEW YORK BRANCH OFFICE

MIDLAND ELECTRICAL CONTRACTING CORP.

and Case No. 29–CA–144562
29–CA–144584

UNITED ELECTRICAL WORKERS OF AMERICA, IUJAT, Local 363

Marcia E. Adams, Esq,
for the General Counsel

Ronald Steinvurzel, Esq.
Lindsey E. Haubenreich, Esq.
(Steinvurzel & Levy Law Group, White Plains, NY)
for the Respondent

Gary P. Rothman, Esq.[1]
Eric J. Laruffa, Esq.
(Law Offices of Richard M. Greenspan, P.C., Ardsley, NY)
for the Charging Party

DECISION

STATEMENT OF THE CASE

Mindy E. Landow, Administrative Law Judge. Based upon charges filed by United Electrical Workers of America, IUJAT, Local 363 (Local 363 or the Union) against Midland Electrical Contracting Corp. (Midland or Respondent), a Consolidated Complaint and Notice of Hearing (complaint) issued on April 29, 2015 alleging that Respondent violated Section 8(a)(1), (5) and (d) of the Act by failing to make contractually required fund contributions to various Union employee benefit funds; failing to timely withdraw from the Building Industry Electrical Contractors Association (BIECA), and refusing to adhere to the collective-bargaining agreement between BIECA and the Union. Respondent filed an answer and then an amended answer denying the material allegations of the complaint and asserting certain affirmative defenses

[1] "Mr. Rothman has advised the Regional Director that as of January 21, 2016, he is no longer affiliated with the Law Offices of Richard M. Greenspan."

which will be discussed, as relevant, below. A hearing of this matter was held before me in Brooklyn, NY on September 17, 2015.

Based upon my consideration of the entire record in this matter,[2] including my evaluation of the witnesses and the briefs filed by the Respondent and counsel for the General Counsel, I make the following

FINDINGS OF FACT

JURISDICTION

Respondent is a domestic corporation and, at material times, maintained a place of business in Staten Island, New York.[3] Respondent is engaged in the business of electrical installation and maintenance. During the 12-month period prior to the issuance of the complaint, a period which is representative of its annual operations generally, Respondent purchased and received goods and materials valued in excess of $50,000 directly from suppliers located outside the State of New York. Based upon the record herein, I find that at all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

ALLEGED UNFAIR LABOR PRACTICES

Background

Sometime during the spring of 2010, Respondent, by its President Kevin McGinley, contacted Charles Shimkus, the Union's Business Manager, to discuss his employees joining the Union and obtaining coverage under the BIECA multi-employer collective-bargaining agreement. BIECA, an association of electrical contractors, had executed a collective-bargaining agreement with the Union in 2008 covering a unit of electricians, electrical maintenance mechanics, helpers, apprentices, and trainees employed by its member employers. This agreement was in effect from December 1, 2008 until November 30, 2011. At their initial meeting, McGinley advised Shimkus that Respondent wanted to obtain Project Labor Agreement (PLA) work for the New York City School Construction Authority, work which historically had been performed by members of another union, Local 3, IBEW. Shimkus informed McGinley that BIECA and the Union were considering filing a lawsuit to allow its members to perform such work; however, no lawsuit had been filed at the time.

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[2] Counsel for the General Counsel's motion to amend the record to include General Counsel's Exhibit 12, which was inadvertently omitted from the exhibits in this matter is hereby granted.

[3] In December 2014, Respondent relocated its offices to New Jersey.

Sometime prior to June 30, 2010, Respondent decided to join BIECA and assume the collective-bargaining agreement which has been referenced above. In so doing, Respondent executed three documents: a Membership Application, a Recognition Agreement, and an Assumption Agreement.

The Membership Application

On or about June 30, 2010, Respondent entered into a Membership Application and Designation of Bargaining Representative with BIECA (the Membership Application) where Respondent designated BIECA as its bargaining representative. This agreement, which was not signed by any representative of the Union, provided in relevant part as follows:

> A. The Employer hereby applies for membership in the Association. The Employer understands that it agrees to be bound by the Constitution and By-Laws of the Association.
>
> B. The Employer hereby designates the Association as its bargaining representative in all negotiations with Local 363 for its employees in the bargaining unit described above[4] and agrees to be bound by all the terms of any agreement entered into between the Association and Local 363 covering said employees with the same force and effect as though the Employer had executed the agreement as a party.
>
> C. The Association hereby agrees to represent the Employer in negotiations with Local 363 and to negotiate a collective bargaining agreement on the Employer's behalf concerning the Employer's employees in the collective bargaining unit described above.
>
> D. The Employer shall be responsible for payment of dues to the Association for the full period of the Agreement with Local 363. Resignation from the Association must be in writing and served on the Association by certified mail no less than 90 days prior the day of the expiration of the agreement between the Association and Local 363. Timely receipt of such resignation shall relieve the Association from any responsibilities or obligations to bargain on behalf of the Employer for a new collective bargaining agreement.

[4] The unit was described as: "All electricians, electrical maintenance mechanics, helpers, apprentices and trainees excluding office clerical employees, professional employees, guards and supervisors as defined in the Act."

The Recognition Agreement

This agreement, executed by duly authorized representatives of Respondent and the Union, entered into on or about June 30, 2010,[5] provides as follows:

> WHEREAS, the Union has presented to the Employer evidence that it represents a majority of the employees of the Employer in the classification and facility hereinafter set forth;
>
> WHEREAS, the Employer has satisfied itself, as a result of such evidence and other investigation that the Union does represent a majority of such employees, and
>
> THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:
>
> Employer recognizes the Union as the sole and exclusive collective bargaining agent for all employees of the Employer in the following classification:
>
> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees, excluding office clerical employees, professional employees, guard and supervisors as defined in the Act.

The Assumption Agreement

Thereafter, the Union, the Association and Respondent signed an Assumption Agreement.[6] This agreement set forth, in pertinent part, the following:

> 1. The Employer is bound to all of the terms and conditions as are applicable from time to time by the nature of the work performed for each of the Association Collective Bargaining Agreements which are incorporated by reference herein as if fully set forth in this Agreement.
>
> 2. The Union having hereby requested recognition as the majority representative under the Act, the Employer hereby recognizes the Union as the majority Section 9(a) representative under the Act. The Employer also recognizes that the Union has the

[5] Another version of the Recognition Agreement was executed on July 30, 2010. However, there is no dispute as to the authenticity of this document.

[6] Again, there are two versions of the Assumption Agreement in evidence: one is effective by its terms as of July, 1, 2010; the other is effective as of its terms as of August 1, 2010. Notwithstanding the variation in the dates, the authenticity of the agreement is not disputed.

majority support of the unit employees to be the unit employees' collective bargaining representative and the Employer further recognizes the Union as the majority representative based on the Union having shown, or having offered to show an evidentiary basis of its majority support.

3. The parties further agree to be bound to all the agreements and declarations of trusts, amendments and regulations, thereto, referenced in the Association Collective Bargaining Agreement and to remit all contributions as set forth under the Association Collective Bargaining Agreement and all amendments, renewals and/or extensions thereto, as adopted by the aforesaid Association and the aforesaid Local Union or their designated trustees.
4. The Employer agrees to be responsible for the payment of fringe benefit contributions due and owing pursuant to the Association Collective Bargaining agreement. All contributions are due in the fund office by the tenth of each month. . . .
5. The Employer agrees that the Association shall, on behalf of the Employer, negotiate successor Collective Bargaining Agreements, amendments, renewals and extensions . . . and the Employer agrees to be bound by any and all amendments renewals and/or extensions of the above referenced Association Collective Bargaining Agreements unless and until this Agreement is properly terminated by either the Employer or the Union in accordance with the renewal and/or Termination Provisions of the Association Collective Bargaining Agreement.

The Collective-Bargaining Agreement

As is relevant to the facts of the instant case, the collective-bargaining agreement which is the subject of the above-described Assumption Agreement, as entered into by Respondent, Local 363 and BIECA, provides for mandated contributions to various employee benefit funds: the Security Fund, the Building Trades' Welfare Benefit Fund, the Building Trades' Annuity Fund, the Building Trades' Education Fund and the Electricians' Retirement Fund.

Additionally, Article 38 of the collective-bargaining agreement provides as follows:

> This Agreement shall be effective as of the 1st day of December, 2011 and shall remain and continue in full force and effect until Midnight November 30, 2014 and from year to year thereafter, unless either party gives written notice to the other by certified mail, return receipt requested, at least sixty (60) days prior to the date of expiration of this Agreement, that it desires to modify or amend and/or renegotiate terms.

The identical provision, with dates altered to reflect the appropriate term, was contained in the prior collective-bargaining agreement between the Union and BIECA, which was set effective by its terms from December 1, 2008 to November 30, 2011.

The evidence adduced at trial establishes that by August 1, 2010, Respondent's employees were subject to the collective-bargaining agreement between the Union and BIECA.

The Lawsuit

At some point in 2011, BIECA initiated a lawsuit against the City of New York seeking to obtain PLA work for its members. The lawsuit was dismissed on August 4, 2011. No further substantive detail concerning this matter was adduced on the record.

Respondent's attempts to withdraw from the collective-bargaining agreement:

On January 17, 2013, McGinley sent the following correspondence to Shimkus:

> Due to the PLA Agreement we need to opt out of the Union, IUJAT Local 363. We cannot be competitive in our bidding while being members of Local 363, We hoped as we discussed in our first meeting, that Local 363 would be part of the PLA Agreement. Unfortunately that never came to pass due to losing the court case in Federal Court. Furthermore, this letter is to inform you as of January 31, 2013, Midland Electrical Contracting and all of its employees will no longer be members of IUJAT Local 363 Electrical Union due to the above mentioned reasons.

On January 23, 2013, Gary Rothman, counsel for the Union replied in pertinent part:

> Please be advised that Local 363 will not agree to release Midland Electrical Contracting Corp. from its collective bargaining contract obligations. The current BIECA contract, to which Midland Electric is bound, is effective until November 30, 2014. Until at least that date, and for any additional time that Midland Electric may be bound by any successor agreement, Midland Electric will remain bound to the BIECA collective bargaining agreement with Local 363. In that regard, Midland Electric remains obligated to make all fringe benefit contributions to the BIECA funds and the United Welfare Fund—Security Division, as provided in your contract.

After this time, Respondent remained in BIECA and continued to abide by the terms of the collective-bargaining agreement. However, McGinley testified that in early 2013, he had several telephone conversations with Shimkus where he stated that he would go out of business because of an inability to obtain PLA work. According to McGinley, Shimkus said that he did not have a problem with Midland leaving the Union, but that the problem fell with BIECA President Patrick Bellantoni.

On March 29, 2013, Respondent associate Vanessa Perez emailed Bellantoni requesting that he email a copy of the "Building Industry Electrical Contractors Association Agreement." Bellantoni replied that it was in book form and could not be emailed. He then sent a copy of the industry collective-bargaining agreement to Perez. That was the only document provided.

Thereafter, in May 2013, Respondent filed a lawsuit against BIECA and the Union to nullify the collective-bargaining agreement on the basis of breach of contract. As to this claim, the relief sought was as follows:

> Thus, Plaintiff seeks a declaratory judgment declaring the CBA to be null and void, of no force and effect and Midland's performance under the CBA should be excused when Midland performs work pursuant to any Project Labor agreements that require Midland to recognize IBEW Local 3 as the sole and exclusive bargaining representative of its craft employees who are performing work covered by said Agreement.

Respondent additionally claimed fraudulent inducement insofar as it asserted that if the Association and the Union had advised Respondent that its lawsuit seeking PLA work had proven to be unsuccessful, it would have withdrawn from the Association and terminated the 2008 CBA pursuant to the terms of that CBA and would not have agreed to enter into the Association's subsequent CBA with the Union commencing December 1, 2011. In this regard, Respondent sought the following relief:

1. For a declaratory judgment declaring the Collective Bargaining Agreement to be null and void, of no force and effect and excusing Midland's performance under said Agreement when Midland performs work pursuant to Project Labor Agreements that require Midland to recognize IBEW Local 3 as the sole and exclusive bargaining representative of its craft employees who are performing work covered by said Agreement.
2. For a declaratory judgment declaring the Collective Bargaining Agreement to be null and void, of no force and effect as to Midland on the grounds that the December 1, 2011 Collective Bargaining agreement was procured through fraud due to the material omission of the dismissal of the Complaint in BIECA v. The City matter; and
3. For such other relief including an award of attorneys' fees, costs and disbursements as to this Court may seem just and proper.

It does not appear from the record that this matter proceeded to a hearing, and on October 13, 2013, the Respondent, the Union and BIECA entered into a stipulation of dismissal of the foregoing lawsuit providing that it would be dismissed as to all parties with prejudice and without costs or fees awarded to any party.

Subsequent events

In August 2014, BIECA and the Union began negotiations for a successor agreement. On November 30, 2014, the parties executed a Memorandum of Agreement (MOA) effective December 1, 2014 through November 30, 2017.

On September 4, 2014, Respondent sent a "notice of termination" to BIECA and the Union providing in pertinent part as follows:

> Please note that pursuant to Article 38 of the CBA, the CBA "shall remain and continue in full force and effect until Midnight **November 30, 2014**, and from year to year thereafter, unless either party gives written notice to the other by certified mail, return receipt requested, at least sixty (60) days prior to the date of expiration of this Agreement, that it desires to modify or amend and/or renegotiate same.

On or about July 1, 2010, Midland and the Union entered into an Assumption Agreement, which was signed by Midland and representatives of the Union and the Association (the "Assumption Agreement"). According to Paragraph 1 of the Assumption Agreement, Midland agreed to be "bound to all of the terms and conditions as are applicable from time-to-time by the nature of the work performed for each of the [CBAs] which are incorporated herein by reference as if fully set forth in this Agreement." Furthermore, according to Paragraph 5 of the Assumption Agreement, Midland agreed "to be bound by any and all amendments, renewals and/or extensions of the [CBA] unless and until this agreement is properly terminated by either [Midland] or the Union in accordance with the renewal and/or Terminations Provisions of the [CBA]." A copy of the Assumption Agreement is enclosed herewith.

Accordingly, Midland is a signatory to the CBA and is herein providing written notice sent by certified mail, return receipt requested, at least 60 days prior to the date of the expiration that it desires to amend the CBA. In accordance with the Termination Provisions in Article 38 of the CBA, Midland is formally advising the Union and the Association that Midland does not wish to renew the CBA. In accordance with the Termination Provisions in Article 38 of the CBA, Midland is also formally advising the Union and the Association that Midland does not wish to renew the Assumption Agreement. As such, the last day that Midland will be bound by the CBA or the Assumption Agreement will be November 30, 2014.

Respondent sent a follow-up letter dated September 16, 2014 reiterating its contention that it had, in accordance with the provisions of the CBA, timely notified the Union and the Association that it did not wish to renew the CBA or the Assumption Agreement, and that the last day it will be bound by either would be November 30, 2014.

The parties stipulated that as of September 2014, no payments to any of the contractually required benefit funds noted above had been made.[7]

ANALYSIS AND CONCLUSIONS

An employer who signs an agreement to name a multiemployer association to be its bargaining agent and to be bound by the collective-bargaining agreement in effect between a union and that multiemployer association and "any modification, extensions or renewals" of that collective-bargaining agreement is on notice that that the bargaining relationship will be governed by subsequent agreements if the employer fails to provide proper notice to the contrary. Absent such notice, that employer is bound by the new agreement negotiated between the union and the association. See *Ted Hicks and Associates, Inc*. 232 NLRB 712, 713 (1977).

[7] Respondent agreed to this stipulation with the caveat that it did not acknowledge that any such payments were due.

In *Retail Associates*, 120 NLRB 388, 395 (1958), the Board found that to effectively withdraw from such a multiemployer relationship, the withdrawal must be both unequivocal and timely. Moreover, in *The Carvel Co.*, 226 NLRB 111 (1976), the Board found that in order to be timely, the employer's withdrawal must be made prior to the commencement of multi-employer bargaining over a new contract:

In *Retail Associates*, supra, the Board set forth the rules governing the withdrawal of an employer from multiemployer bargaining. An employer may withdraw without the union's consent prior to the start of bargaining by giving unequivocal notice of the intent to abandon the multiemployer unit and to pursue negotiations on an individual basis. However, once negotiations have actually begun, withdrawal can only be effectuated on the basis of "mutual consent" or "unusual circumstances."

As is of particular relevance to the instant case, Board precedent has also made clear that the action of withdrawal of negotiating authority from a multiemployer association is an action distinct from terminating a contract. *Rome Electrical Systems*, 349 NLRB 745, 747 (2007), enfd. 286 Fed. Appx. 697 (11th Cir. 2008).[8]

Applying the foregoing principles here, I conclude that the Respondent continues to be bound to BIECA and the terms of the 2014–2017 collective-bargaining agreement between BIECA and the Union.

While the collective-bargaining agreement at issue had a 60-day notice requirement for the parties to request modification or termination, the terms of the Membership Application clearly provide that:

> Resignation from the Association must be in writing and served on the Association by certified mail no less than 90 days prior [to] the day of the expiration of the agreement between the Association and Local 363. Timely receipt of such resignation shall relieve the Association form any responsibilities or obligations to bargain on behalf of the Employer for a new collective-bargaining agreement.

There is also no dispute that Respondent agreed to be bound to the Membership Application which unambiguously provided that:

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[8] In their post-hearing briefs, both the General Counsel and Respondent have cited to *Carr Finishing Specialties*, 358 NLRB No. 165 (2012), in support of their respective positions. That case was issued by a Board panel that the Supreme Court found was not properly constituted. *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014). The General Counsel urges that I rely upon the reasoning set forth by the Board in that matter. While I do not officially rely upon that case, I do agree with the general analytical framework as set forth therein, as it is supported by other Board precedent as discussed above.

> The Employer hereby designates the Association as its bargaining representative in all negotiations with Local 363 for its employees in the bargaining unit described above and agrees to be bound by all the terms of any agreement entered into between the Association and Local 363 covering said employees with the same force and effect as though the Employer had executed the agreement as a party.

In the present case, the agreement in effect expired on November 30, 2014. Thus, Respondent was required to notify BIECA of its withdrawal, in writing by certified mail no later than 90 days prior to that date, which it failed to do. Respondent's September notices were beyond that time frame. There is also no evidence of mutual consent or unusual circumstances which would authorize an untimely withdrawal.

Respondent has argued that the contractual termination provisions in the collective-bargaining agreement, which were incorporated by reference in the Assumption Agreement, superseded the termination language in the Membership Agreement. The substance of that argument has been rejected by the Board. See *Rome Electrical Systems*, supra at 747–748 (rejecting employer's argument that termination language in a particular collective-bargaining agreement superseded termination language in a previously executed letter of assent to be bound by the association-union agreements). To the contrary, I conclude that Respondent conferred actual authority on BEICA to bind it to subsequent agreements, absent a timely withdrawal according to the terms of the Membership Application.

As the General Counsel has noted, the September notices of withdrawal were further untimely inasmuch as they were sent subsequent to the commencement of negotiations for the 2014–2017 agreement. See *The Carvel Company*, supra. As the Board has stated:

> The right of withdrawal by either a union or employer from a multiemployer unit has never been held, for Board purposes, to be free and uninhibited, or exercisable at whim. For the Board to tolerate such inconsistency and uncertainty in the scope of collective-bargaining units would be to neglect its function in delineating appropriate units under Section 9, and to ignore the fundamental purpose of the Act by fostering and maintaining stability in bargaining relationships. Necessarily under the Act, multiemployer bargaining units can be accorded the sanction of the Board only insofar as they rest in principle on a relatively stable foundation.

Retail Associates, supra at 395.

I further find that Respondent's reliance upon its unsuccessful attempts to rid itself of its commitments to the 2011–2014 collective-bargaining agreement is unavailing. Respondent's January 2013 letter to the Union, which did not reference BIECA, failed to constitute a legitimate withdrawal from BIECA, as it did not comport with the clear requirements set forth in the Membership Application. In addition, Respondent requested immediate withdrawal during the second year of a 3-year contract instead of at the end of the agreement in effect at the time. Respondent was further notified by the Union that its attempt to withdraw from the CBA would not be agreed to.

In a similar vein, I find that Respondent's 2013 lawsuit failed to meet the Membership Application's requirements. Here, Respondent unsuccessfully attempted to have the District Court nullify the CBA; not its membership in BIECA. In any event, the lawsuit proved ineffective and did not provide BIECA with termination notice consistent with the terms of the Membership Application.

In Respondent's answer to the complaint, Respondent alludes to the issue of fraudulent inducement, which echoes claims brought in the lawsuit referenced above. I find these assertions to be unconvincing. There is no evidence that membership in BIECA was premised upon a contingency or the Union's guarantee that it would be able to obtain PLA work. Moreover, there is no evidence that Respondent failed to receive a copy of the Membership Application, which it, in fact, executed and then forwarded to BIECA. In short, there is simply no evidence to support the insinuation that Respondent was unaware of what it had agreed to.

CONCLUSIONS OF LAW

1. By failing and refusing to adhere to the collective-bargaining agreement effective December 1, 2014 to November 30, 2017 between United Electrical Workers of America, IUJAT, Local 363 (the Union) and The Building Industry Electrical Contractors association (BIECA), and by refusing, since September 2014, to make contractually required fund contributions to the Union's Security Fund, Building Trades' Welfare Benefit Fund, Building Trades' Annuity Fund, Building Trades' Education Fund and the Electricians Retirement Fund on behalf of unit[9] employees, Respondent has violated Section 8(a)(1), (5) and (d) of the Act.

2. The above labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Respondent should be ordered to recognize and, on request, bargain with the Union as the collective-bargaining representative of all unit employees, as described above. The Respondent should also be required to adhere to the 2014–2017 collective-bargaining agreement between the Union and BIECA and make whole the unit employees for any loss of earnings and other benefits suffered as a result of the Respondent's failure to apply the 2014–2017 collective-bargaining agreement between BIECA and the Union

[9] All electricians, electrical maintenance mechanics, helpers, apprentices and trainees excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). In the event backpay is owed, Respondent should be ordered to compensate employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters. *Don Chavas LLC, d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Additionally, Respondent should be ordered to make all required benefit fund contributions from September 2014, to the present, including any additional amounts applicable to such funds as set forth in *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, Respondent should be ordered to reimburse unit employees for any expenses resulting from the Respondent's failure to make the required contributions to the funds, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Such amounts are to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent Midland Electrical Contracting, formerly of Staten Island New York, and currently operating from New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize the United Electrical Workers of America, IUJAT, Local 363, (the Union), as the collective-bargaining representative of unit employees as has been defined herein and in the Recognition Agreement, as set forth above.
(b) Failing and refusing to apply to unit employees the 2014–2017 collective-bargaining agreement between the Building Industry Electrical Contractors Association (BIECA) and the Union.
(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

(b) Make whole all bargaining unit employees and all benefit funds for any loss of income, contributions or benefits, and for any expenses incurred in connection with those benefit fund losses by those employees, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this decision.

(d) Within 14 days after service by the Region, post at its facility in Staten Island, if still extant, and in its New Jersey facility copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or by other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 1, 2014.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. February 1, 2016

Mindy E. Landow

Mindy E. Landow
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to recognize the United Electrical Workers of America, IUJAT, Local 363 (Union) as the exclusive collective-bargaining representative of all employees performing work in the following unit:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to apply to unit employees the existing collective-bargaining agreement between the Building Industry Electrical Contractors Association (BIECA) and the Union.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL recognize the Union as the exclusive collective-bargaining representative of employees in the bargaining unit and will adhere to all provisions in our existing collective-bargaining agreement with the Union.

WE WILL make whole our bargaining unit employees, and all benefit funds, for any loss of income, contributions, or benefits suffered as a result of the failure to apply to those employees the collective-bargaining agreement between the BIECA and the Union and for any expenses incurred in connection with those benefit fund losses, with interest.

MIDLAND ELECTRICAL CONTRACTING CORP.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Two Met Rotech Center (North), Jay Street and Myrtle Avenue, 5th Floor
Brooklyn, New York 11201–4201
Hours: 9 a.m. to 5:30 p.m.
718–330–7713.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/29-CA-144562 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (718) 330-2862.